

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

**BEDROCK COMPUTER,
TECHNOLOGIES, LLC**

v.

**SOFTLAYER TECHNOLOGIES,
INC., ET AL.**

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No. 6:09-cv-269 LED-JDL

JURY DEMANDED

ORDER

Before the Court is Defendants' Request for *In Camera* Review of Non-Privileged Documents on Bedrock's Privilege Log (Doc. No. 263). On December 28, 2010, the Court issued an order (Doc. No. 352) addressing many of the issues Defendants raise in their motion. In addition to ordering Bedrock to amend its privilege log and submit supplemental briefing, the Court ordered certain documents to be produced. After receiving supplemental briefing from Bedrock with regard to the documents ordered to be produced, the Court upheld the privilege as to certain documents. (Doc. No. 357).

On January 21, 2011, Bedrock submitted additional supplemental briefing, as well as its Amended Privilege Log, per the Court's December 28, 2010 Order. (Doc. No. 404). Upon consideration of Bedrock's supplemental briefing, Defendants' motion is **GRANTED-IN-PART** and **DENIED-IN-PART**.

This Order addresses the log entries listed in subsections *ii* and *iii* of the Court's December 28, 2010 Order. The Court will uphold the privilege with regard to many of the amended log entries. Specifically, the Court deems Bedrock's amendments to the following entries are sufficient to uphold the privilege claimed: 78, 101-105, 110, 125, 138, 185-186, 189-194, 260, 322, 349-350, 351-357, 365-366, 368, 374, 379, 391, 395-397, 398, 400-401, 403, 408-411, 413, 415, 420-421, 424, 431,

433-436, 442, 446-451, 454, 456, 459, 463, 465-466, 471, 483-485, 488-489, 491, 524-525, 528 & 529-532. Although some of the above listed documents may not have a recipient listed in the entry, the Court finds that the documents reflect legal advice actually communicated to a client from an attorney.

Finally, the Court finds that draft patent prosecution documents or Bedrock documents reflecting patent prosecution strategy are privileged. Therefore, the privilege claimed for the following documents, originally listed in the Court's December 28, 2010 Order in subsection *iii*, will be upheld: 145, 148, 149, 150-153, 155-157, 167-169, 170, 173, 174, 183-184, 187, 188, 199-201, 204, 209, 216, 222-223, 225, 233, 235, 247, 249-256, 259, 261, 262, 268, 272, 280, 310, 318, 319-321, 324, 325, 331-332, 334-336, 340, 344-347, 348, 358, 364, 369, 382-383, 385-387, 389, 404, 407, 416, 481-482, 490, 496, 498-499, 506, 508, 511, 515, 518, 520, 523, 533 & 540.

However, the following documents do not support the contention of privilege because 1) no recipient was identified; 2) there is no indication that the document memorializes legal advice, or a communication, between an attorney and client; 3) the document does not concern patent prosecution strategy; and/or 4) the document is not a draft patent prosecution document:¹ 144, 212, 292², 381, 439, 464, 486, 494, 522, 526-527 & 535. Bedrock shall produce these documents to all Defendants no later than February 2, 2011.

So ORDERED and SIGNED this 26th day of January, 2011.


JOHN D. LOVE
UNITED STATES MAGISTRATE JUDGE

¹ Entries 286 and 288 were produced on January 21, 2011.

² In its supplemental briefing, Bedrock seemed to argue the entry was protected by the work product doctrine. (Doc. No. 356). The Court held its decision in abeyance on the production of the document until it received supplemental briefing on the work product doctrine and the date of anticipation of litigation. (Doc. No. 357). Having received no such briefing, this document shall be produced.